

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEOFF JOHNSON,

Plaintiff,

- against -

FUBIZ, INC.,

Defendant.

Docket No. 18-cv-12221

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Geoff Johnson (“Johnson” or “Plaintiff”), by and through his undersigned counsel, as and for his Complaint against Defendant Fubiz, Inc. (“Fubiz” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of copyrighted photographs of Johnson’s childhood home, owned and registered by Johnson, a Nebraska-based professional photographer. Accordingly, Johnson seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Johnson is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 1111 N. 13 Street Suite 420, Omaha, NE 68102.

6. Upon information and belief, Fubiz is a domestic business corporation duly organized and existing under the laws of the State of New York, with a place of business 20 W. 20th Street, New York, NY 10011.

7. Upon information and belief Fubiz is registered with the New York Department of State Division of Corporations to do business in the State of New York.

8. At all times material, hereto, Fubiz has owned and operated a website at the URL: <http://www.fubiz.net> (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

9. Johnson photographed his childhood home (the “Photographs”). True and correct copies of the Photographs are attached hereto as Exhibit A.

10. Johnson then licensed the Photographs to on-line magazine Feature Shoot.

11. On or about April 8, 2015, Feature Shoot ran an article that featured the Photographs entitled *Photographer Returns To His Childhood Home Where He Lived With His Mother, A Compulsive Hoarder*. See URL <https://www.featureshoot.com/2015/04/photographer-returns-to-his-childhood-home-where-he-lived-with-his-mother-a-compulsive-hoarder/>. A true and correct copy of the Feature Shoot article is attached hereto as Exhibit B.

12. Johnson is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

13. The Photographs were registered with the United States Copyright Office and were given registration number VAu 1-269-967 with an effective date of November 17, 2015 (the “967 Registration”). A true and correct copy of the 967 Registration is attached hereto as Exhibit C.

B. Defendant’s Infringing Activities

14. On or about July 17, 2015, Fubiz ran an article on its Website entitled *Photographs of a Life with a Hoarder*. See URL <http://www.fubiz.net/2015/07/17/photographs-of-a-life-with-a-hoarder/> (the “Article”). The article prominently featured the Photographs. A true and correct copy of the article is attached hereto as Exhibit D.

15. Fubiz did not license the Photographs from Plaintiff for its article, nor did Fubiz have Plaintiff’s permission or consent to publish the Photographs on its Website.

16. Prior to the filing of this lawsuit, there was no communication between Plaintiff and Defendant.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. Fubiz infringed Plaintiff’s copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website.

19. Fubiz is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

20. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

21. Upon information and belief, the foregoing acts of infringement by Defendant have been willful and in reckless disregard of and indifference to Plaintiff's rights.

22. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Fubiz be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December __, 2018

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